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# REPORT OF THE SUB-COMMISSION ON THE PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FIFTIETH SESSION

Report of Mr. El-Hadji Guissé, Chairman of the Sub-Commission at its fiftieth session, prepared in accordance with paragraphs 9 (d) and 11 of Commission on Human Rights resolution 1998/28

## Introduction

1. In its resolution 1998/28 of 17 April 1998, entitled "Work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities", the Commission on Human Rights welcomed the further steps taken by the Sub-Commission to reform and improve its methods of work, in particular by restructuring its agenda during its forty-ninth session, by making efforts to implement its decision 1996/114 of 29 August 1996 to achieve a compilation of the existing rules of procedure and procedural questions to be resolved, by deciding to limit the initiation of new studies (decision 1996/113 of 29 August 1996), by adopting criteria for new studies (decision 1997/112 of 27 August 1997), by establishing a sessional working group on the methods of work of the Sub-Commission (decision 1997/104 of 5 August 1997) and by enhancing its cooperation with all relevant bodies.

2. In the same resolution, the Commission invited the Sub-Commission to continue its efforts to avoid duplication with the work of the Commission and further to improve its efficiency, taking into account the views of Member States, and, in that context, called upon the Sub-Commission and its members:

(a) To focus on its primary role as an advisory body of the Commission on Human Rights;

(b) To give particular attention to the selection of studies, taking into account recommendations of the Commission and of treaty bodies, and, when choosing subjects for study, to explain the choice made so as to enable the Commission adequately to assess the need for that study, and to complete all studies within a reasonable time;

(c) To adhere strictly to the principles of independence, impartiality and expertise;

(d) To facilitate efficient and effective participation of non-governmental organizations;

(e) To improve consultations with special rapporteurs undertaking studies for the Sub-Commission;

(f) Further to enhance cooperation with mechanisms of the Commission, and, within their competence, with all relevant bodies, including human rights treaty bodies and relevant United Nations research institutions;

(g) To focus strictly on questions relating to human rights in accordance with its mandate.

3. The Commission also called upon the Sub-Commission to devote sufficient time at its fiftieth session to the discussion of its working methods and to prepare specific recommendations on that issue for consideration by the Commission.

4. The Commission requested the Chairman of the Sub-Commission at its fiftieth session to report to the Commission at its fifty-fifth session on significant aspects of the work of the Sub-Commission.

5. In accordance with that request, the Chairman of the Sub-Commission submits the present concise report to the Commission. More details regarding the various aspects of the work of the fiftieth session of the Sub-Commission will if necessary be provided by the Chairman of the Sub-Commission in his statement to the Commission at its fifty-fifth session. The report of the Sub-Commission on its fiftieth session is before the Commission in document E/CN.4/1999/4-E/CN.4/Sub.2/1998/45.

## I. AGENDA OF THE SUB-COMMISSION - FURTHER RATIONALIZATION

6. In response to the Commission's request that the Sub-Commission should reform and improve its methods of work in order to further enhance its efficiency, the Sub-Commission has continued with the process of rationalizing its agenda, begun at its forty-ninth session, by once again adopting an agenda containing 14 items (as against 22 items at its forty-eighth session). This rationalization concerns both procedural issues relating to the organization of its work and substantive issues regarding the various aspects of the mandate entrusted to it by the Commission and the Economic and Social Council: it consists partly in grouping together several interrelated issues under one agenda item and partly in greater use of the biennial consideration of some sub-items. It is more important than ever for the Sub-Commission to rationalize its agenda, not by cutting down the amount of time allocated to

it, but by varying the amount of time devoted to each agenda item and eliminating any risk of creating duplication of work. The restructuring of the Sub-Commission's agenda will continue to be the subject of particular attention since it has enabled the Sub-Commission to manage its work better in the limited time available at each session and to make a more in-depth study of the items under discussion.

## II. STATEMENT BY THE CHAIRMAN OF THE FIFTY-FOURTH SESSION OF THE COMMISSION ON HUMAN RIGHTS

7. In paragraph 10 of its resolution 1998/28, the Commission invited its Chairman to address the Sub-Commission about the debate under the Commission agenda item entitled "Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its forty-ninth session". Pursuant to that resolution, the Sub-Commission extended an invitation to the Chairman of the fifty-fourth session of the Commission, Mr. Jacob Selebi, who addressed the Sub-Commission on 10 August 1998. The statement by the Chairman of the Commission to the fiftieth session of the Sub-Commission was received with particular attention since it emphasized the Sub-Commission's role and mandate in the context of the Commission's review of its mechanisms.

8. The Chairman of the Commission on Human Rights said that the Sub-Commission, as an advisory body of the Commission, had a central role to play by making recommendations to the Commission for the enhancement of its effectiveness and clearly specifying its unique contribution in the form of working groups, comprehensive studies for the benefit of human rights bodies, especially the treaty bodies, and work on country situations that were not under consideration by the Commission.

9. Welcoming the Sub-Commission's efforts to rationalize its agenda and its decisions to limit the initiation of new studies and to achieve a compilation of the existing rules of procedure and procedural questions to be resolved, the Chairman of the Commission underlined the need to pursue and extend the reform already begun. With regard to new studies, he said it was necessary to pay particular attention to study selection and to submit studies to the Commission only if they met the needs of the Commission, treaty monitoring bodies and working groups, and focused on core human rights issues.

10. The Chairman of the Commission encouraged the Sub-Commission to continue to develop a partnership with non-governmental organizations (NGOs), to improve its relationship with them so that each side benefited from the other's expertise, to enter into constructive dialogue and to prepare draft resolutions, as far as possible in closed meetings, in order to maintain its independence and impartiality. On certain matters, NGOs should make public statements before the Sub-Commission but, on others, they might find a more receptive audience in the context of informal discussions with special rapporteurs, chairpersons of working groups and other members.

11. Lastly, the Chairman of the Commission said he trusted that the Sub-Commission would demonstrate, on its fiftieth anniversary, that it could still make a unique and significant contribution to the promotion and protection of human rights.

## III. METHODS OF WORK OF THE SUB-COMMISSION: ENHANCING THE EFFECTIVENESS OF THE SUB-COMMISSION

12. The fiftieth session of the Sub-Commission took place against the background of reforms of the mechanisms of the United Nations with regard to the operation and even the future of a number of its bodies. In that context, and in pursuance of paragraph 9 (a) of Commission resolution 1998/28 and of Commission decision 1998/112, consultations were held at the Sub-Commission on 10 August 1998, first at a closed meeting then at a public meeting, between members of the Sub-Commission and the Bureau of the fifty-fourth session of the Commission on Human Rights. With the active participation of all its members, the Sub-Commission prepared a document (E/CN.4/Sub.2/1998/38) representing the common position of its members on the reforms begun or to be undertaken, which was presented to the Bureau of the Commission at a closed meeting it held with the Sub-Commission. A number of the points raised in this document deserve to be highlighted.

13. In this document, the Chairman of the Sub-Commission notes that a review of its activities demonstrates that the Sub-Commission has considerable achievements to its credit, not only in the fields of standard-setting, promotion of standards and encouragement of implementation, but also in the field of human rights policy-making. Because of its openness and its flexibility, it functions as a forum where new ideas are identified, debated and crystallized into proposals which in due time affect the work of the other United Nations human rights bodies, including the Sub-Commission's parent body, the Commission on Human Rights.

14. Some of the major initiatives taken by the Sub-Commission are now an integrated part of the human rights machinery. For example, the Sub-Commission played a major role in mobilizing the United Nations system to combat apartheid. Its annual report concerning adverse consequences of investment and trade with South Africa during the apartheid era was vital in strengthening the United Nations sanctions which contributed to the transition to a democratic and non-racist Government in that country.

15. The Sub-Commission prepared the initial draft of the United Nations Declaration and later the International Convention on the Elimination of All Forms of Racial Discrimination; the same applied to the Declaration on the Protection of All Persons from Forced Disappearance, the draft United Nations declaration on the rights of indigenous peoples now pending before the Commission, the Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in which They Live, the Principles for the protection of persons with mental illness and the improvement of mental health care, and the Guidelines for the Regulation of Computerized Personal Data Files.

16. The preparation within the Sub-Commission of principles and guidelines as well as the first draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms paved the way for the establishment by the Commission of the working group which elaborated what is known as the Declaration on Human Rights Defenders.

17. The Sub-Commission also played an important role in the creation of thematic mechanisms of the Commission, which it also helped to implement. The first thematic procedure, the Working Group on Enforced or Involuntary Disappearances, arose from a recommendation of the Sub-Commission. Several studies prepared in the Sub-Commission or its working groups have resulted in the appointment by the Commission of thematic rapporteurs and working groups: the origin of the Special Rapporteurs on freedom of information and expression, on the independence of the judiciary, on religious intolerance and on racism in any part of the world, and the Working Group on Arbitrary Detention, can all be traced back to the Sub-Commission.

18. The Sub-Commission makes three relatively unique contributions to the human rights field:

(a) Undertaking comprehensive studies that contribute to the work of the human rights bodies, particularly to the United Nations treaty-monitoring bodies;

(b) Bringing to the attention of the Commission situations not under review by the Commission but which appear to reveal gross and systematic violations of human rights or new human rights concerns; and

(c) Supporting its working groups.

In addition, the Sub-Commission has a useful and unique relationship with NGOs, providing them with access and, thereby, the Sub-Commission with information and expertise. The Sub-Commission has made substantial achievements in each of these aspects and can make further contributions to the Commission for the continued and future enhancement of human rights mechanisms and procedures.

19. The annual review that the Sub-Commission holds on situations of violations of human rights and fundamental freedoms and, in particular, of the policies of racial discrimination and segregation in all countries constitutes a central part of its work. In particular, it is one of the most relevant international forums in the field of human rights; it allows new situations, trends and facts that emerge in the world to be expressed; it enables an analysis of concrete situations to be undertaken together with more general items that it considers, thus giving to thematic studies a wider comprehension and objectivity; it allows the study of countries and cases not considered by the Commission, or allows new facts worthy of attention to be examined; and it enables urgent measures to be adopted when the situation requires.

20. The thematic working groups form a vital part of the Sub-Commission's method of work. They have provided and continue to provide the opportunity for a participatory study of current trends and difficulties in thematically important areas, and involve subtle monitoring of human rights problems by providing a channel for the airing of grievances. The NGOs and government observers who attend provide useful information on the basis of which the working groups draw up their conclusions, recommendations and choice of further steps to be taken.

21. The Sub-Commission is well aware that every United Nations mechanism has to evaluate its own performance critically in the light of new developments and needs. It has over the last few years carried out a thorough review of its methods of work and made significant changes. In 1991/1992, an inter-sessional working group prepared "Guidelines concerning its methods of work". Further revisions were made in 1994 and 1995 and these have been communicated to the Commission.

22. In 1996 the Sub-Commission initiated a process to adopt a consolidated set of its rules of procedure and methods of work, based on a working paper by one of its members. The intention is to complete this work in 1998. The changes are partly the initiatives of the Sub-Commission itself. For example, the Sub-Commission has initiated a major change through its decision 1997/113 of 27 August 1997 intended to avoid duplicating work on human rights violations which are considered under the public procedure of the Commission. As a result of some closed meetings which made it possible for the members to discuss practical issues more freely and fully, it has also implemented other major reforms contributing to its effectiveness, including improvements in the constructive dialogue between its members. This is an ongoing process that all the members hope to continue as needs arise.

23. In its resolution 1998/28, the Commission expressed appreciation of these improvements and called on the Sub-Commission to continue these efforts with the dual purpose of avoiding duplication with the work of the Commission and enhancing the effectiveness of the contribution which the Sub-Commission can make in its primary role as the expert body advising the Commission.

24. It is of the utmost importance to safeguard the independence of Sub-Commission members and of the Sub-Commission as a collective body. Although cooperation and coordination with other human rights bodies are useful and, in some cases, absolutely necessary, every effort should be made to preserve, encourage and enhance the Sub-Commission's potential not only to build on the initiatives taken by other bodies (including its parent bodies), in accordance with their respective competence, but also to explore new areas in accordance with present-day world events at its own initiative. By the same token, these bodies should avoid taking actions which would in fact limit or endanger the Sub-Commission's freedom to take initiatives in accordance with its mandate.

## IV. WORK OF THE SUB-COMMISSION AT ITS FIFTIETH SESSION

25. The Sub-Commission conducts its work partly through its study programme, partly by use of its working groups and partly by plenary debates and decisions. Four inter-sessional working groups met before the fiftieth session: the Working Group on Communications, the Working Group on Indigenous Populations, the Working Group on Minorities and the Working Group on Contemporary Forms of Slavery.

26. The sessional working group on the administration of justice also met during the fiftieth session. On the group's recommendation, the Sub-Commission decided to submit to the Commission for its consideration the draft international convention on the protection of all persons from enforced disappearance.

7. The Sub-Commission held 36 meetings and heard more than 520 statements, 36 of which were made by NGOs and 106 by government observers. One hundred nd eighty-six documents were examined by the Sub-Commission, amounting o 1,382 pages. One hundred and forty-eight accredited NGOs attended the ession, as well as 110 delegations of government observers and 6 United Nations bodies. In all, the Sub-Commission adopted 30 resolutions nd 15 decisions (in 1997 it adopted 43 resolutions and 19 decisions).

8. On 26 August 1998, the Sub-Commission held a special meeting to mark he fiftieth anniversary of the adoption of the Universal Declaration of luman Rights.

9. The Sub-Commission decided to establish, for a three-year period, a sessional working group composed of five of its members, taking into account the principle of equitable geographical distribution, to examine the working methods and activities of transnational corporations and to convene an expert seminar, in close cooperation with relevant intergovernmental and non-governmental organizations, if necessary without financial implications, on the right to freedom of movement and to make practical recommendations. It also recommended the establishment: (a) of a forum on economic, social and cultural rights, to be called the Social Forum, to meet during its annual session, and (b) follow-up machinery on the question of the impunity of perpetrators of violations of economic, social and cultural rights; lastly, it recommended the establishment of a voluntary fund for the purpose of enabling representatives of minorities to participate in the work of the Working Group on Minorities.

## V. STUDIES, REPORTS AND NEW SUBJECTS

30. The Sub-Commission welcomed the final report on the relationships between the enjoyment of human rights and income distribution, submitted by Mr. José Bengoa (E/CN.4/Sub.2/1997/9 and E/CN.4/Sub.2/1998/8), and the final report on systematic rape, sexual slavery and slavery-like practices during armed conflict submitted by Ms. Gay J. McDougall (E/CN.4/Sub.2/1998/13); Ms. McDougall was requested to update her report in the light of recent developments in this area.

31. Five studies are under way on the following subjects: traditional practices affecting the health of women and the girl child; systematic rape, sexual slavery and slavery-like practices during armed conflict: update on developments; treaties, agreements and other constructive arrangements between States and indigenous populations; indigenous peoples and their relationship to land; human rights and terrorism.

32. The preparation and updating of the following working papers was entrusted to a number of experts during the fiftieth session: revised paper on the methods of work of the Sub-Commission; proposals for the work of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance; the rights of non-citizens; globalization in the context of the increase in incidents of racism, racial discrimination and xenophobia; the realization of the right to education, including education in human rights; human rights as the primary objective of trade, investment and financial policy; the right to adequate food; reservations to human rights treaties;

observance of human rights by States not parties to United Nations human rights conventions. On the basis of these working papers, the Sub-Commission will decide at its next session whether a more in-depth study of some of the questions they deal with should be carried out by new special rapporteurs of the Sub-Commission. As in the past, all working documents are prepared by experts without financial implications.

33. The Sub-Commission recommended entrusting studies of the following issues to new special rapporteurs: the concept and practice of affirmative action (Mr. Marc Bossuyt); promotion of the realization of the right to drinking water supply and sanitation services (Mr. El-Hadji Guissé).

## VI. CHAIRMAN'S EVALUATION OF THE WORK OF THE SUB-COMMISSION AT ITS FIFTIETH SESSION

34. As a result of the work of the Sub-Commission at its fiftieth session, it is possible to state that it is the only United Nations body where independent experts, United Nations agencies and representatives of Governments and of non-governmental organizations meet and conduct a constructive exchange of views on the promotion and protection of human rights; thus, the Sub-Commission is a human rights laboratory.

35. It should be emphasized that the Sub-Commission has kept up the pace of rationalization of its agenda, thus avoiding duplication of work and making it possible to pay particular attention to the priority matters relating to its mandate. For example, at its fiftieth session, the Sub-Commission took account of the idea that economic, social and cultural rights should be given greater weight in its agenda; in that regard, it proposed to the Commission on Human Rights, for the first time, the establishment of a working group to examine the effects of the activities of transnational corporations on individual and collective economic rights. It also proposed that the Commission should establish a social forum where it would be possible to examine the full range of ideas on economic, social and cultural rights. A number of study proposals have been submitted to the Sub-Commission, relating to economic rights such as the right to drinking water and sanitation services and the right to income distribution, a study on extreme poverty, etc. The Sub-Commission also adopted a resolution on the establishment of follow-up machinery on the question of the impunity of perpetrators of violations of economic, social and cultural rights. These issues deserve in-depth analysis, for the enjoyment of economic, social and cultural rights forms the very basis of the enjoyment of the other human rights, from which they are indivisible.

36. Emphasis has also been given to issues relating to racism, xenophobia and the elimination of all forms of racial discrimination. It should be recalled that the Commission has asked the Sub-Commission to submit a series of proposals on these subjects in preparation for the World Conference against Racism. It is also important to note that the Sub-Commission's rationalization of its agenda has enabled it to make interesting and substantive links between problems relating to racism and xenophobia and issues regarding the rights of persons who are not nationals of the country where they live and of all migrant workers and members of their families and to globalization in the context of the increase in incidents of racism, racial

discrimination and xenophobia. The decision to appoint a special rapporteur to carry out a study on the concept and practice of affirmative action should allow richer and more in-depth discussion of these issues.

37. The part played by the Sub-Commission's working groups, both sessional and inter-sessional, is also worth highlighting. They make a significant contribution to the highly positive results of the Sub-Commission's work. As in the past, they have prepared important reports on issues relating to human rights and to the development of certain situations from a human rights perspective. The efforts made by these groups to achieve concrete results should be given support and encouragement. The Sub-Commission, with its achievements and its projects, has a duty to press on with its efforts to enhance the quality of its future work. One of the final observations of the document submitted to the Bureau of the Commission (E/CN.4/Sub.2/1998/38) states that the present mandate of the Sub-Commission is sufficiently broad and flexible to allow it to perform a constructive role, with the complexities of today's world, in the global quest for the promotion, protection and realization of all human rights. It is the Sub-Commission's task to continue its work within the framework of the mandate for which it was established, taking into account developments in the law, human rights law in particular.

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